



U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART	SUBJECT	RELEASE NUMBER
212 FW 2	Ethics	419
FOR FURTHER INFORMATION CONTACT	Financial Reporting Requirements	DATE
Division of Human Resources		March 4, 2003

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter provides requirements and procedures for financial reporting by certain employees of the Service.


Deputy DIRECTOR

FILING INSTRUCTIONS:

Remove:

212 FW 2, 06/12/95, FWM 193

Insert:

212 FW 2, 03/04/03, FWM 419

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2.1 What is the purpose of this chapter? This chapter provides the requirements and procedures for financial disclosure reporting by certain employees of the Service.

2.2 To whom does this chapter apply? This chapter applies to Service employees specifically designated under paragraphs 2.7, 2.8, 2.9 and 2.10.

2.3 What authorities govern financial disclosure reporting?

A. Title I of the Ethics in Government Act of 1978 (Public Law 95-521, as amended).

B. Ethics Reform Act of 1989 (P.L. 101-194, as amended).

C. Section 201(d) of Executive Order 12674 (as modified by E.O. 12731).

D. 5 CFR 2634.

2.4 What is the Service's policy for financial disclosure reporting? To ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties and responsibilities without compromising the public's trust, certain high-level officials and employees excepted from the competitive service because of their confidential or policymaking character must publicly disclose their personal financial interests. Additionally, certain less senior officials and other designated employees must disclose their financial interests in a confidential nature to facilitate an internal conflict of interest review. Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts by providing for a systematic review of the financial interests of both current and prospective employees. These reports assist the Department and the Service in administering their ethics programs and providing conflict of interest counseling to employees.

2.5 What are the definitions of terms used in this chapter?

A. Appearance of a conflict of interest. The appearance of a conflict of interest arises when an employee is involved in an official duty capacity with specific outside parties and there are circumstances that would cause a reasonable person with knowledge of the relevant facts to question the employee's impartiality in the official matter.

B. Confidential filer. An employee required to file the OGE Form 450 (Executive Branch Confidential Financial Disclosure Report) or OGE 450A, (Certificate of No New Interests). See paragraph 2.9 for a description of employees designated as confidential filers.

C. Covered position. Positions that have been listed as designated positions which require the incumbent to file an OGE 450 based on specific criteria and guidelines published in 5 CFR 2634.904 and statutorily-specified positions which require the incumbent to file an Executive Branch Personnel Public Financial Disclosure Report (SF 278) based on 5 CFR 2634.202.

D. Days. Calendar days.

E. Dependent child. Any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual.

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

F. Excepted investment fund. A mutual fund, common trust fund of a bank, pension, or deferred compensation plan, or any other investment fund that is:

(1) Widely held.

(2) Publicly traded (or available) or widely diversified. A fund is widely diversified when it holds no more than 5 percent of the value of its portfolio in the securities of any one issuer (other than the U.S. Government) and no more than 20 percent of any particular economic or geographic sector.

(3) One in which an individual neither exercises control over/nor has the ability to exercise control over the financial interests held by the fund.

G. Excepted trust. A trust that was not created by the reporting individual, his/her spouse, or dependent child, and the holdings or sources of income of which the reporting individual, his/her spouse, and dependent child have no past or present knowledge.

H. Filer. Refers to a confidential filer, public filer, or both.

I. Gift. A payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance.

(2) Suitable mementos of a function honoring the reporting individual.

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(3) Food, lodging, transportation, and entertainment provided by a foreign government, within a foreign country, or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof.

(4) Food and beverages that are not consumed in connection with a gift of overnight lodging.

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals.

J. Honorarium. A payment of money or anything of value to the reporting individual or his/her spouse for an appearance, speech, or article, excluding necessary travel expenses. Also included are payments to charities in lieu of payment to the reporting individual or his/her spouse.

K. Income. Income means "gross income." All income from whatever source derived. It includes, but is not limited to, earned income such as compensation for services, fees, commissions, salaries, wages, and similar items; gross income derived from business (and net income if the reporting individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions, income from discharge of indebtedness; a distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether or not they are taxable for Federal income tax purposes, such as interest on municipal bonds.

L. Personal hospitality of any individual. Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of, or on property or facilities owned by, that individual or his/her family.

M. Personal residence. Any real property used exclusively as a private dwelling by the reporting individual or his/her spouse that is not rented out during any portion of the reporting period. The term is not limited to one's domicile. There may be more than one personal residence; i.e., a vacation home.

N. Personal savings account. Includes a certificate of deposit, a money market account, a savings account, an interest-bearing checking account, or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution. Additionally, any money market mutual fund holding is treated as the equivalent of a personal savings account.

O. Public filer. An individual required to file the SF 278. See paragraph 2.7 for description of individuals designated as public filers.

P. Qualified trust. A trust specifically certified by the Office of Government Ethics.

Q. Recusal. An ethics agreement in which an employee disqualifies him/herself from acting in official matters involving entities that present a financial conflict of interest for him/her.

R. Relative. An individual who is related to the reporting individual as father, mother, son, daughter, brother, sister, uncle, aunt, great-uncle, great-aunt, first cousins, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, stepsister, half brothers, half sisters, or who is the grandfather or grandmother of the spouse of the reporting individual, and includes the fiancé/fiancee of the reporting individual.

S. Remedial action. Steps taken to avoid potential violations of ethics laws and regulations that have been identified.

T. Reporting period. The time frame for which a reporting individual must disclose his/her financial interests. (See paragraphs 2.11A, and B for designations of time frames.)

U. Reviewing official. The ethics counselor responsible for collecting, reviewing, and certifying financial disclosure reports.

V. Special Government Employee (SGE). An employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

W. Value. A good faith estimate of the fair market value of an item if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense.

X. Waiver. A written determination that allows an employee to retain an interest that would otherwise be prohibited to the employee in a particular position because of a conflict of interest restriction. A waiver is a form of remedial action.

2.6 Who are the responsible ethics officials? See 212 FW 1.6 as it relates to financial disclosure reporting.

2.7 Who files the SF 278?

(1) The Director.

(2) Career and non-career Senior Executive Service employees.

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(3) Schedule C employees.

(4) SGEs who meet the SF 278 criteria for filing and who are expected to work more than 60 days in any calendar year.

(5) Any employee detailed into a covered position from a non-covered position for more than 60 days.

2.8 Who should file a report? Employees who work 60 days or less in a calendar year in a position covered by the SF 278 filing requirement, such as some SGEs and persons assigned in an acting capacity, do not need to file an incumbent SF 278 for that year. Also, employees who enter a covered position with less than 60 days left in the calendar year do not need to file an annual report for that year, but must file a new entrant report.

2.9 Who files the OGE 450?

A. Employees who occupy positions classified at GS-15 and below and when they participate **personally and substantially** through decision or the exercise of **significant judgment**, in taking an official action for:

(1) Contracting or procurement.

(2) Administering or monitoring grants, subsidies, licenses, or other Federal benefits.

(3) Regulating or auditing any non-Federal entity.

(4) Other activities in which the final decision or action will have a direct and substantial economic impact on the interest of any non-Federal entity.

B. Employees who occupy any other position that the agency determines requires filing to avoid actual or apparent conflict of interest.

C. SGEs who do not meet the SF 278 criteria.

D. Any employee detailed into a covered position from a non-covered position for more than 60 days.

2.10. Who files the OGE 450A? Any annual filer (except SGEs) may file the OGE 450A if they have no new interests to report since the last report, and if they do not have a new position description or significantly changed duties. The OGE 450A may only be filed for 3 consecutive years and then a new OGE 450 must be filed as a baseline.

2.11 When do the forms need to be filed?

A. SF 278 Public Financial Disclosure Reports.

(1) **New Entrant/Nominee.** Due within 30 days after assuming a position covered by the SF 278 filing requirements or for the Director no later than 5 days after nomination. A new entrant form is not required when an employee transfers from one covered position to another.

(2) **Incumbent.** Due annually, no later than May 15 following the covered calendar year. (The Department asks for the forms in January in order to give the reviewers additional time.) An employee who works less than 60 days in a calendar year would file a new entrant report, but need not file an annual report for that year.

(3) **Termination.** Due within 30 days of leaving a covered position. The filer must sign and date a termination report no earlier than the last day of service in the position. A termination report is not necessary if he or she worked less than 60 days in the covered position or if there is less than 30 days between leaving one covered position and starting a new covered position.

B. OGE 450 Confidential Financial Disclosure Reports

(1) **New Entrant.** Due within 30 days after assuming a position covered by the OGE 450 filing requirements. The reporting period is the preceding 12 months from the date of filing. A new entrant form is not required when an employee transfers from one covered position to another.

(2) **Incumbent.** Due annually, no later than October 31 for the 12-month period ending the preceding September 30. SGEs do not file incumbent reports. Instead, they are required to file an additional new entrant report each year, upon their "reappointment or redesignation" as an SGE for a new 365-day period.

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2.12 What are applicable schedules and reporting periods for the SF 278?

New Entrant Report	Annual Filer Report	Termination Report
Schedule A	Schedule A	Schedule A
Asset Value (BLOCK B) - as of any date that is within 31 days of the date of filing. Income (BLOCK C) - preceding calendar year and the current calendar year up to the date of filing	preceding calendar year	begins at the end of the last period covered by the previous filing and ends at the date of termination
Schedule B	Schedule B	Schedule B
(not applicable)	preceding calendar year	begins at the end of the last period covered by the previous filing and ends at the date of termination
Schedule C - Part I	Schedule C - Part I	Schedule C - Part I
preceding calendar year and the current calendar year up to 31 days of the date of filing	preceding calendar year	begins at end of the last period covered by the previous filing and ends at the date of termination
Schedule C - Part II	Schedule C - Part II	Schedule C - Part II
any agreements or arrangements as of the date of filing	preceding calendar year plus current filing year up to the date that the employee files	begins at the end of the last period covered by the previous filing and ends at the date of termination
Schedule D - Part I	Schedule D - Part I	Schedule D - Part 1
preceding two calendar years and the current calendar year up to the date of filing	preceding calendar year plus current filing year up to the date that the employee files	begins at the end of the last period covered by the previous filing and ends at the date of determination
Schedule D - Part II	Schedule D - Part II	Schedule D - Part II
preceding two calendar years and the current calendar year up to the date of filing	(not applicable)	(not applicable)

2.13 Will a filing extension be granted?

A. Public filers. The Designated Agency Ethics Official (DAEO) or his or her designee may grant an extension of the SF 278 deadline up to 90 days beyond May 15. The request should be made prior to the due date.

B. Confidential filers. The reviewing official may grant extensions of due dates for both new entrant and annual filers up to 90 days.

2.14 What is the annual financial disclosure filing cycle? In approximately August or September of each year, the Service Ethics Counselor and/or Deputy Ethics Counselor will issue guidance and instructions regarding processes and procedures for the upcoming annual financial disclosure filing cycle. The written notice will, provide for:

A. Updating the Service's annual listing of positions requiring the filing of financial disclosure reports from the incumbents.

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B. Timetables for requesting, receiving, reviewing, and certifying financial disclosure reports.

C. Statistical reporting requirements for financial disclosure reports.

2.15 What are review procedures for financial disclosure reports? The following provide basic review procedures for ethics counselors in reviewing SF 278's and OGE 450's.

A. Note the date of receipt on the report. A report is considered filed when it is received by the ethics counselor. This date is critical in determining timeliness of filing and review.

B. Verify that the report was required against the master list and log the report into the list.

C. Inform public filers of any late filing fees that may have been incurred.

D. Ensure that there are no missing pages or attachments and that all schedules and/or parts of the reports have been completed, if applicable. A report cannot be certified if all required schedules/parts are not completed.

E. Gather the "tools of review." Such tools may include:

(1) The filer's previous report, if any.

(2) The instructions that accompany the financial disclosure report.

(3) A copy of the filer's position description or knowledge of the filer's duties.

(4) Copies of the Federal ethics laws and regulations.

(5) Financial reference materials concerning financial institutions, corporate affiliations, mutual funds, et cetera.

2.16 What is the time period for review? Financial disclosure reports must be **initially** reviewed within 60 days from the date of receipt. Final certification, however, may occur at a later date where additional information is being sought or remedial action is being taken.

2.17 What is final certification? A financial disclosure report that is signed by a reviewing official certifies that the reviewing official has reviewed the report and that he or she has concluded that each required item has been completed, and that on the basis of information contained in the report, the filer is in compliance with applicable ethics and conflict of interest laws and regulations.

2.18 When should additional information be requested? Generally, there is no requirement to audit a report to determine if disclosures are accurate. Reviewing officials should take disclosures at "face value" except as indicated below. It is appropriate to assume that a filer has read and understood the instructions and has made an accurate report unless the filer's history demonstrates otherwise. Reviewing officials must seek additional information on a report and annotate the report when:

A. The form is incomplete (i.e., when a filer fails to list all required information on a reportable entry).

B. The form reveals one entry (or the absence of one) that is inconsistent with another entry on the report or on the filer's previous report. Each entry should either continue on the next report, appear or disappear because of a reported transaction or disappear because it slipped below the threshold or dissipated.

C. The form omits an entry of which the reviewing official has independent knowledge.

D. The reviewing official requires more information to ensure the filer's compliance with Federal ethics laws and regulations.

2.19 How should additional information be recorded? A reviewing official must annotate the report when the entries require additional information, clarification, or correction. The reviewer must initial all annotations and, as appropriate, indicate the source of the information.

2.20 How are conflicts of interest resolved? Violations of the conflict of interest regulations or statutes may be cause for mandatory remedial action. However, such remedial action should normally be considered only after attempts to obtain voluntary resolution from the employee have failed. All resolutions of conflicts of interest must be documented in writing regardless of how they were obtained; i.e., voluntary or mandated means.

2.21 What are the procedures for voluntary resolution? An attempt to obtain voluntary resolution by an employee is the responsibility of Associate/Assistant Ethics Counselors (see 212 FW 1.6D(2)). Voluntary resolution may include, but is not limited to, the following actions being taken.

A. Voluntary divestiture.

B. Voluntary conversion to securities that are not prohibited or that do not create actual or apparent conflicts of interest with the employee's duties.

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C. Voluntary reassignment to another position.

2.22 What are the procedures for remedial action? If attempts at voluntary resolution have failed and it is necessary to initiate remedial action to remedy the holding of a prohibited financial interest or to eliminate the conflict or appearance of a conflict of interest created by the holding of a prohibited financial interest, such remedial action must be taken within 90 days from the date the filer receives notice that the action is required. Only the Director can order remedial action. In cases where remedial action is warranted, Assistant Ethics Counselors should contact the Associate Ethics Counselor in the Division of Human Resources for specific instructions on how to proceed. Remedial action may include, but is not limited to:

A. Reassignment or disqualification of the employee. It may be possible for the employee to be reassigned to another job, or to be disqualified from performing particular duties. Although the number of cases where this remedy can be used should be rare, the possibility should be explored before divestiture of an interest is ordered.

B. Waiver. The Deputy Ethics Counselor may determine in an individual case that a disqualifying financial interest in a particular matter is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, he/she may then issue a 18 U.S.C. 208(b)(1) waiver permitting the employee to participate in the particular matter.

C. Divestiture of the interest. An employee may be required to divest an interest, including outside employment, that is prohibited by law or regulation. Divestiture of the interest will be ordered in all situations where it is determined by the appropriate official that there is no other satisfactory remedy. Evidence of divestiture must be provided in the form of broker sales receipts or other appropriate documents.

D. Establishment of a qualified trust. The Director, Office of Government Ethics may allow an employee the option to place holdings in a qualified trust. A qualified trust is established when, by written agreement, the employee gives control and legal title to a trustee. Detailed provisions concerning qualified trusts are found in 5 CFR 2634, Subpart D.

E. Other forms of trust. Employees who have pre-existing trusts or inherited trusts (not established by themselves) may, in rare instances and on a case-by-case basis, receive authorization to continue the trust, provided the employee has no control over its management or assets.

2.23 Who is authorized to order remedial action? The Director is authorized to order remedial actions. The

advice of the appropriate Regional Solicitor, the Associate Solicitor-Division of General Law, or the (DAEO) or his or her designee, may be sought before such an order is issued. This authority to order remedial action may not be redelegated.

2.24 What happens to an employee who fails to comply with an order for remedial action? Any employee who fails to comply with an order for remedial action will be considered to be in violation of the conflict of interest regulations and will be subject to disciplinary action. Disciplinary action may include oral or written warning or admonishment, reprimand, suspension, reduction in grade or pay, removal from position or removal from office.

2.25 Can an employee appeal? An employee has the right to appeal an order for remedial action and has 30 days from the date of the remedial action order to exercise this right before any disciplinary action may be initiated against him/her. Each appeal must be in writing and contain:

A. The basis for appeal.

B. Facts supporting the basis.

C. The telephone number where the appellant can be reached to discuss facts pertinent to the appeal.

2.26 Where does an employee appeal? Orders for remedial action issued by the Director may be appealed to the Deputy Secretary, whose decision will be final.

2.27 Who considers the appeal? Appeals will be considered by a Review Board consisting of a program Assistant Secretary selected by the DAEO, the Associate Solicitor or the Deputy Associate Solicitor, Division of General Law, and the Director or Deputy Director of the Office of Personnel Policy within the Department. Assistant Secretaries may assign responsibility to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action. The DAEO or his/her assistant will serve as secretary to the Board, except cases in which he/she has previously participated. In such cases, the Board will designate an employee who has not previously been involved with the case to serve as secretary.

2.28 What are the procedures the Review Board will follow? The Review Board members will:

A. Obtain from the Service Ethics Counselor a full statement of actions and considerations that led to the order for remedial action including any supporting documentation or files used by the ethics counselor.

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B. Obtain from the appellant all facts, information, and exhibits for documents that he or she feels should be considered before a final decision is made.

C. Prepare a summary of the facts pertinent to the appeal. When appropriate, the Board may provide for a personal appearance by the appellant to ascertain the circumstances concerning the appeal or may designate the Board secretary or another employee to conduct further fact-finding, or may do both. Fact-finding procedures will be carried out by a person who:

(1) Has not been involved in the matter being appealed.

(2) Does not occupy a position subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being appealed.

D. Establish a file containing all documents related to the appeal that must be made available to the appellant and his/her representative.

E. Provide to the official who will decide the appeal an advisory recommendation on the appeal. The views of dissenting members of the Board will also be provided.

2.29 What assurances are made to the appellant? Each appellant is assured of:

A. Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting an appeal.

B. A reasonable amount of official time to present the appeal if the employee is otherwise in a duty status.

C. The right to obtain counseling from an ethics counselor of the Department.

D. The right to be accompanied, represented, and advised by a representative of his/her own choosing. The Board may disallow the choice of an individual as a representative if such representation would result in a conflict of interest or position that would conflict with the priority needs of the Department or that would give rise to unreasonable costs to the Government.

2.30 What assurances are made to the appellant's representative? Each person chosen to represent an appellant is assured of:

A. Freedom from restraint, interference, coercion, discrimination, or reprisal.

B. A reasonable amount of official time to present an appeal if the representative is an employee of the Department and is otherwise in a duty status.

2.31 What happens if an employee files a financial disclosure report late? An individual who files any SF 278 more than 30 days after the due date or more than 30 days after the last day of an extension, whichever occurs later, must pay the United States a \$200 late filing fee. Confidential filers are not subject to the late filing fee.

2.32 What are the penalties for failure to file or for falsifying reports?

A. Referral of cases. When there is reasonable cause to believe that a reporting individual has willfully failed to file a public report or information required on the report, or a reporting individual (public or confidential) has willfully falsified any information required to be reported, the reporting individual's name will be referred to the Attorney General by either the Service Ethics Counselor or the DAEO.

B. Civil action. The Attorney General may bring a civil action against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports. A civil penalty not to exceed \$10,000 may be assessed against the individual.

C. Criminal action. An individual may also be prosecuted under criminal statutes for knowingly and willfully supplying false information on any financial disclosure report.

D. Administrative action. Appropriate administrative action, to include disciplinary and adverse personnel actions, may be taken against individuals who fail to file public or confidential reports, file reports late, or falsify or fail to report required information.

2.33 Can the public assess financial disclosure records?

A. Upon request and in accordance with the provisions contained in 5 CFR 2634.603, public financial disclosure reports must be made available to members of the general public.

B. No member of the public is permitted access to confidential financial disclosure reports except by order of a Federal court or as otherwise provided for under the Privacy Act.

2.34 How long are financial disclosure reports retained? Both confidential and public financial disclosure reports must be retained for a period of 6 years after receipt. After the 6-year period, these reports must be destroyed unless needed in an ongoing investigation.